

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

CRL.A.No. 1151 of 2001(D)

CC.170/2000 of JUDL. MAGISTRATE OF FIRST CLASS, ERATTUPETTA

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APPELLANT:

ANTONY K.M., S/O. MATHEW,
KAYYALAKYAKOM HOUSE,
NELUKAVUMATTOM P.O.,

BY ADV. SRI.MATHEW JOHN (K)
SRI. BABY THOMAS

RESPONDENTS:

1. PIOUSSE MATHEW, S/O. MATHEW,
KANJIRATHANAL, PAIKADAPPEEDIKA
BHAGOM, KONIPPADU P.O.,
2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. C.K. SURESH, PUBLIC PROSECUTOR
SRI.GEORGE MATHEW
SRI.A.V.TELLES

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.R. UDAYABHANU, J.

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CRL. A. NO. 1151 OF 2001

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Dated this the 22nd day of November, 2007

JUDGMENT

The appellant is the complainant in C.C. No. 170/2000 in the file of Judicial First Class Magistrate, Erattupetta, who had initiated proceedings under Section 138 of the Negotiable Instruments Act, in which case the accused stands acquitted. The prosecution case is that the 1st respondent had borrowed an amount of Rs.1,25,000/- from the complainant and for discharging the liability he issued the impugned cheque dated 12.03.1999 which when presented for encashment got dishonoured for want of funds in the account of the accused. Lawyer notice was sent demanding the payment of Rs. one lakh. On the next day itself, the 2nd lawyer notice was send correcting the cheque amount as Rs.1,25,000/-. Both the lawyer notices were received on the same day. There was no repayment.

2. The evidence adduced in the matter consisted of the testimony of PW1, Exts. P1 to P9.

3. PW1, the complainant has testified with respect to the alleged borrowal and execution of the cheque and as to the dishonour for the want of funds in the account of the accused. He has also proved the relevant documents in this regard i.e., Exts.P1 to P9. He has also

testified that in the first notice i.e., Ext.P4, there was a mistake with respect to the amount mentioned that is Rs. one lakh was mentioned instead of Rs.1,25,000/-. The same is also mentioned in the complaint. The suggestion put in the cross examination of PW1 is that the signature in the cheque is not that of the accused and that he has not borrowed any amount from the accused. I find that there is no explanation as to how the cheque happened to be with the complainant.

4. The court below has held that from the date of receipt of the first notice, the cause of action has commenced and hence the amount mentioned in the first notice is only Rs. one lakh and that the second notice i.e., Ext. P7 cannot be taken into consideration and as there is variation in the amount mentioned in the notice and the cheque the offence could not be established.

5. I find that the findings of the court below in this regard cannot be upheld. It is evident that the amount happened to be wrongly mentioned in the first notice is only on account of the clerical error at the office of the Advocate concerned. The same has been rectified immediately. I find that there is no merit in the findings of the courts below that the cause of action has arisen on receipt of the

first notice. I find that the execution of the cheque stands proved from the testimony of PW1 and documents produced. The statutory presumptions stand un rebutted. In the circumstances, the acquittal is set aside. The respondent/accused is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo imprisonment till the rising of the court and to pay a compensation of Rs.1,25,000/- (Rupees one lakh and twenty five thousand only) and in default to undergo simple imprisonment for three months. The respondent/accused is granted six months time from today onwards to remit the amount of compensation. He shall appear before Judicial First Class Magistrate, Erattupetta on **22.05.2008** to receive sentence.

The Crl. Appeal is disposed of as above.

K.R. UDAYABHANU, JUDGE.

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K.R. UDAYABHANU, J

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22nd day of November, 2007

ORDER

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